IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/09/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.11543 of 2000 and Writ Petition No.11544 of 2000

P.M.Ramalingam
Commandant -98 BN CRPF
R-35/8, 120, Feet Mogappair Road
Anna Nagar Western Extension
TS.Krishna Nagar
Chennai 600 050. ..... Petitioner in both WPs.

-Vs-

1. The Director General of Police
Central Reserve Police Force
Block No.I
C.G.O.Complex, Lodhi Road
New Delhi 110 003.

2. The Inspector General of Police
(OPS and Training)
Central Reserve Police Force
Block No.1
C.G.O Complex, Lodhi Road
New Delhi 110 003.

3. Mr.T.R.Arora,
Deputy Inspector General of Police
CRPF, Agarthala
Tripura State. ..... Respondents in both WPs.

Petitions filed under Article 226 of the Constitution of India,
praying to issue a writ of mandamus and a writ of certiorarified mandamus, as
stated therein.

For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel for
M/s.S.Silambannan

For Respondents : Mr.V.T.Gopalan for
Mrs.Vanathi Srinivasan

:COMMON ORDER
W.P.No.11543 of 2000 has been filed for the issuance of a writ

of Certiorarified mandamus, to call for the entire records relating to the Charge Memo dated 25.05.2000 issued by the first respondent in Ref.No.D.IX-43/99-CRC to the petitioner including the preliminary Report submitted by the third respondent pursuant to the directions issued by the first respondent in connection with the allegations contained in the anonymous letters against the petitioner and quash the same and direct the respondents 1 and 2 to direct a fresh preliminary enquiry by any Senior officer other than the third respondent after giving due opportunity to the petitioner.

2. W.P.No.11544 of 2000 has been filed for the issuance of a writ of mandamus, to direct the first respondent to expunge the adverse remarks entered by the second respondent in the Annual Confidential Report and approved by the first respondent with respect to the petitioner for the period from 01.04.1998 to 31.03.1999.

3. The brief facts of the case of the petitioner are as follows:

(i) The petitioner joined the Central Reserve Police Force on 16.10.1973 as Deputy Superintendent of Police. He served in various parts of the country. He was promoted as Commandant in the year 1994 and posted as Vice Principal in RTC-I, Recruit Training Centre, Neemuch, Madhya Pradesh from September 1990 to December 1991. Later he was posted as Principal in RTC-III at Trivandrum, Kerala, from July 1996 to June 1998. Subsequently, he was serving as Principal in RTC-II Avadi, Chennai, from June 1998 to January 1999.

(ii) The petitioner has put in 27 years of unblemished service and has discharged his duties and responsibilities to the utmost satisfaction of his superiors. His service was recognized and appreciated every time both by the CRPF authorities as well as by the State Administration. The petitioner has reliably learnt that the Department has received four anonymous letters within a span of one month (i.e.,) from June 1998 to July 1998, while he was working in Avadi, Chennai, containing vague and false allegations against the petitioner. It is alleged in the letters that the petitioner misused his office by deputing the staff for his personal assignments and committed irregularity in the purchase of stores.

(iii) As per the CRPF Canteen Rules, of appendix "L" of Force Institution and Funds Manual, the Principal/Commandant is not the purchasing officer for the canteen, but the canteen Chairman (Deputy Commandant) is the purchasing officer. The Canteen Manager would prepare the requirement of stores and would place the same before the Chairman for approval. The Chairman, after scrutiny, would recommend the same for the approval. The purchase will be made only in accordance with the rules and procedures laid down therein. Periodical inspection and audit are also conducted by the competent authority every year to ascertain that the rules are followed.

(iv) As regards the allegation of misuse of Office is concerned, RTC-III being ad-hoc training Institution, the petitioner had to depend upon RTC-II in various fields. The petitioner had to send persons to RTC-II on various bona fide duties. Accordingly men were sent to various places from RCT-III to RTC-II with proper authority. The petitioner has elaborately specified the details with respect to the procedure adopted during audit as well as the manner in which the personnel were deputed. The allegations contained in the anonymous letters are baseless and false. The petitioner was very strict in enforcing the discipline among the trainees and he used to take

action against the candidates for indiscipline.
(v) The petitioner reliably learnt that the said anonymous letters have been sent at the instance of the then Principal of RTC-II Mr.Pushkar Singh, who was posted during September 1994 to 11.06.1998. He did not want to move from Chennai despite the order of transfer and wanted to continue further in Chennai. When Mr. Pushkar Singh sought illegal help from the petitioner, he refused to oblige and therefore he was instrumental in dispatching the anonymous letters just to foist a false case against the petitioner. The petitioner had already reported to IGP and to the DGP through D.O.letter about the conduct of Mr.Pushkar Singh.

(vi) Shri.T.R.Arora DIGP, the third respondent herein, Principal CTC-II, Coimbatore, was appointed by the IGP as Discreet Enquiry Officer. He is inimically disposed against the petitioner as he was not invited as Chief Guest for the passing out parade on 26.09.1998. The third respondent in consultation with Mr.Pushkar Singh conducted enquiry to create a case against the petitioner, being a close friend and also hailing from the same place. After the petitioner took over the charge of RTC-II, Pushkar Singh wanted to keep the same guards, Regimental Police, Security Aides and cooks even after his transfer out. Since it was not permissible under the Rules, the petitioner had politely refused which had created enmity against the petitioner.

(vii) Pushkar Singh had made a complaint against the petitioner to Group Commandant, CRPF, Avadi, about the removal of Temple Poojari. Even after transfer, Pushkar Singh intervened in the administration of the training institution.
(viii) In all anonymous letters, it is stated that the petitioner speaks Tamil in Office and North Indians were suppressed by the petitioner. Pushkar Singh even earlier attempted to spoil the name of Senior South Indian Officers of this Force. It is further submitted that Sri.T.R.Arora and Pushkar Singh are closely associated with each other. Even while conducting discreet enquiry, Pushkar Singh used to telephone him about the case. The discreet enquiry was conducted by the third respondent with preconceived and biased attitude. The allegations raised in the anonymous letters were only to spoil the petitioner's reputation. The conclusion of the discreet enquiry is contrary to the available records.
(ix) The first respondent on the basis of the discreet enquiry report, ordered for preliminary enquiry against the petitioner. The petitioner requested the first respondent to detail any other Senior Officer other than the third respondent for conducting the preliminary enquiry. In spite of that, the first respondent again appointed the third respondent to hold the preliminary enquiry. The preliminary enquiry also was conducted by the third respondent, the same officer who conducted the discreet enquiry. Pursuant to the preliminary enquiry, charges have been framed and charge memo was also served on him.
(x) While so, even before commencement of departmental enquiry, the first respondent has made an adverse remarks in the Annual Confidential report for the period of 01.04.1998 to 31.03.1999. Before making the adverse remarks in the confidential report, the respondents did not issue any memo or show cause notice to the petitioner. Therefore, the petitioner prays for a writ of

mandamus to expunge the adverse remarks entered by the second respondent in the confidential report and approved by the the first respondent for the period from 01.04.1998 to 31.03.1999.

4. In the counter affidavit filed on behalf of the respondents, it is submitted that the petitioner has performed his usual duties as principal in RTC III and RTC II. Four anonymous complaints were received against the petitioner and based on these complaints, a preliminary enquiry was conducted to find out, if any prima facie case exists against the petitioner on the allegations made in the complaints. During the course of preliminary enquiry, misuse of official position in resorting to bulk purchase of unnecessary items for canteen without observing formalities brought out and keeping in view of the outcome of the preliminary enquiry, a departmental enquiry has been ordered.

5. It is further submitted that as a President of the canteen, the petitioner was responsible to supervise the function and administration of the canteen. The preliminary enquiry conducted against the petitioner has brought out the financial irregularities committed by the petitioner. Hence, the formal departmental enquiry has been initiated. The petitioner would be given ample opportunity to put forth his defence. The petitioner sent personnel from the Force to perform his personal work and allowed to withdraw TA/DA unauthorisedly. Therefore, that established a prima facie case. He has also given the details as to the persons who were deputed.

6. It is further submitted in the counter affidavit that the allegations made against Pushkar Singh and Arora are baseless. The third respondent/ Mr. Arora conducted a detailed enquiry also against Pushkar Singh and he submitted a report against Pushkar Singh. As a result of that enquiry for violation of the provisions of CCS(Conduct) Rules, 1964, IGP(Training) proposed to convey displeasure to Pushkar Singh. Hence, the plea that Mr.Arora was influenced by Pushkar Singh is not correct. The preliminary enquiry was conducted as per the norms. The regular departmental enquiry has been ordered only to find out the factual position. The preliminary enqui ry is only a fact finding enquiry to arrive at further course of action. In the departmental enquiry the petitioner would be given full opportunity. A fresh preliminary enquiry to the matter will not serve any useful purpose. Therefore, there is no merit in the writ petition. 7. Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the petitioner, submitted that the discreet enquiry was conducted on anonymous letters. Thereafter, the preliminary enquiry was also conducted by the very same person who conducted the discreet enquiry. That is not proper. The very purpose of conducting preliminary enquiry is defeated by appointing the very same person who already conducted discreet enquiry, as the Officer to conduct the preliminary enquiry. While conducting preliminary enquiry, the Officer was definitely influenced by his own conclusion arrived at in the discreet enquiry. Therefore, the very purpose of conducting preliminary enquiry was defeated. Therefore, the

appointment of the third respondent as Officer to conduct preliminary enquiry vitiates the entire proceedings since only based upon the preliminary enquiry charge memo had been issued.

8. Mr.V.T.Gopalan, learned Additional Solicitor General

appearing for the respondents submitted that the discreet enquiry and the preliminary enquiry are conducted only to satisfy or to made sure whether primacy facie case is made out for framing of charges and to proceed with the departmental enquiry. Further, the report of the preliminary enquiry or discreet enquiry need not be given to the petitioner. Therefore, the petitioner is not in any way prejudiced by the conduct of the preliminary enquiry by the very same officer who conducted discreet enquiry. 9. In the departmental proceedings, it is not usual or necessary to conduct discreet enquiry and preliminary enquiry. Only in some cases the discreet enquiry is resorted to; discreet enquiry and the preliminary enquiry need not even be conducted. But, when the rules prescribe that before initiating departmental enquiry, preliminary enquiry must proceed, then it is obligatory to conduct preliminary enquiry. Then that procedure adopted should satisfy all the tests; that were taken shall be legally sustainable.

10. In this case, admittedly there was a discreet enquiry initially conducted by the third respondent and he had given report on the conclusions arrived at by the discreet enquiry to the first respondent. Only based upon that discreet enquiry report, the first respondent had ordered preliminary enquiry to be conducted. The purpose of conducting preliminary enquiry even after conducting discreet enquiry is to be more cautious before issuing the charge memo or before proceeding with the departmental enquiry. Therefore, it is a second precautionary measure not to initiate frivolous, unfair or unnecessary departmental proceedings against the officers, the second step of preliminary enquiry is conducted only to guard against initiating domestic enquiry where it ought not be done. Therefore, the two enquiries discreet and preliminary enquiry should be independent; one should not be influenced by the other. So, the very fact that the third respondent, who was entrusted with the conduct of the discreet enquiry and had submitted a report on the basis of his discreet enquiry was appointed to conduct Preliminary Enquiry defeat the very purpose of conducting the preliminary enquiry. He would definitely have been influenced by his own earlier report made in the discreet enquiry. It cannot be said that while preparing the report of the preliminary enquiry, he was not influenced by his own conclusions arrived at in the discreet enquiry; or the conclusions arrived at the preliminary enquiry is uninfluenced by his conclusion in the discreet enquiry. If the preliminary enquiry is to be conducted without any preconceived notions, then the preliminary enquiry should have been conducted by a different officer, a person other than the person who conducted the discreet enquiry. Therefore, the appointment of third respondent as the Officer to conduct preliminary enquiry when he had already conducted discreet enquiry, and had given a report, does not appear to be illegally sustainable as it violates the principles of natural justice. As the second report which should be independent has been given by some person who has given first report. Therefore, the report of the preliminary enquiry cannot be the basis for any further action as it becomes illegal and cannot be relied upon. Therefore, the preliminary enquiry report given in this case by the third respondent has to be quashed. 11. As submitted by the Additional Solicitor General, the domestic enquiry need not always be preceded by a discreet enquiry and preliminary enquiry need not be conducted. But in the Standing Orders which is applicable to the service of the petitioner, there is a specific provisions with respect to conduct of preliminary enquiry, before

proceeding with domestic enquiry.

Standing Order No.20/2001 dated 24.05.2001 reads as follows:

"No.I.X/Inst-Adm.I Subject: Guiding Principles to be followed in PreliminaryEnquiries and Departmental Enquiries. Procedure for conducting Preliminary Enquiries and Departmental Enquiries has been laid down in para 6,7 of Establishment Manual 1976 and Rule 27 of CRPF Rules 1955 respectively.

However, to supplement the procedure, already in existence, following instructions should be carefully studied and implemented in both letter and spirit.

Preliminary Enquiry: A Preliminary Enquiry or fact finding enquiry should be held for determining whether there is a prima facie case for holding a regular Departmental Enquiry against the delinquent or there is a need for termination of the service of the employee, in accordance with the service rules. The report of the PE cannot be used in the Departmental Enquiry, without furnishing a copy to the delinquent. The evidence taken in the Preliminary Enquiry stage cannot also be used for Departmental Enquiry, unless, witnesses are examined, afresh or at least they are tendered for cross-examination. A PE is conducted with the following objectives: a) In ascertain the prima facie default of the allegations. b) Evidence available in support of the said allegations. c) To enable the superior officer of the Force to form judicious opinion regarding nature of the proceedings, that may be drawn up against the defaulters, depending upon the gravity of the offence committed.

A PE can be held ex parte, not merely, for the satisfaction of the concerned authority. However, for the sake of fairness, the Govt. servant should be given an opportunity to give his account pertaining to the allegations against him. This may be in the form of a written reply or an oral statement, reduced to writing by the officer conducting the P.E. In case the Govt. servant fails to respond within the reasonable opportunity given, the P.E.can be concluded without waiting for the statement of the Govt. servant. This opportunity is necessary as it allows the officer conducting the P.E.to form an objective view on the basis of evidence gathered. It also avoids harassment to a Govt.servant, who may have had a very valid reason for his action;"

12. According to the above Standing Order, the preliminary Enquiry or fact finding enquiry should be held for determining whether there is a prima facie case. That is conduct of preliminary is mandatory. Further, it is stated that even thou e held ex parte, however, for the sake of fairness, the Government servant should be given an opportunity to give his account pertaining to the allegations against him. This may be either be in the form of written statement or oral statement reduced to writing by officer conducting preliminary enquiry.

13. Therefore, unlike in the normal departmental proceedings,

the departmental proceedings under the service of Central Railway Police Force, the preliminary enquiry is also statutory in nature. Since it is statutory obligation, the authority who conducts preliminary enquiry is in the nature of quasi judicial authority. Therefore, the quasi judicial authority should consider the entire case independently, uninfluenced by any other previous report. But in this case, the person who was a quasi judicial authority, who conducts preliminary enquiry, had already conducted a discreet enquiry in the very same case. Therefore, the preliminary enquiry conducted by the third respondent is vitiated on the ground of bias inasmuch as he was the officer who conducted the preceding discreet enquiry. Therefore, the preliminary enquiry report filed by the third respondent is liable to be rejected. 14. Further, learned counsel appearing for the petitioner pointed out that the Central Vigilance Commissioner (VCG) has issued a communication in, No.3(V)/99/2 dated 29th June, 1999 on the subject of improving vigilance administration-no action to be taken on anonymous/ pseudonymous petitions/complaints. In this communication paragraph 6 reads as follows:

"It is, therefore, ordered under powers vested in the CVC under para 3(v) of the DGPT Resolution No.171/20/99-AVD,III dated 4th April 199 9 that with immediate effect no action should at all be taken on any anonymous or pseudonymous complaints. They must just be filed."

15. Learned counsel appearing for the petitioner submitted that admittedly this discreet enquiry as well as preliminary enquiry was conducted only on the basis of anonymous letters received by the respondents. In the above CVC regulation it is categorically stated that such anonymous letters must be filed and no action should be taken on the basis of such letters. Neither discreet enquiry nor preliminary enquiry could be conducted based on the anonymous letters. Therefore, on this ground also the result of the preliminary enquiry is liable to be rejected.
16. Learned Additional Solicitor General appearing on behalf of the respondents submitted that this communication by CVC was issued only in the year 1999; whereas these letters were received much earlier to that. So this subsequent communication does not bind the authorities, in the present case, as the enquiries stated much earlier. Therefore, the discreet enquiry as well as the preliminary enquiry do not get vitiated or become illegal in view of the above communication. 17. Learned Senior counsel appearing for the petitioner submitted that though the communication is later in point of time, yet it refers to the public policy that is to be adopted in conduct of the preliminary enquiries against the Government Servants. Therefore, even though it is subsequent to the date of ordering preliminary enquiry, yet, the petitioner can place reliance upon this communication. 18. Learned Additional Solicitor relied upon the judgment of the Supreme Court in Vijay Kumar Nigam v. State of Madhya Pradesh and others ((1996) II SCC, 599) whereby the Supreme Court has held that in a case of departmental enquiry, non supply of the report of preliminary enquiry conducted against the delinquent officer does not violate principle of natural justice. Further, the statement of persons in preliminary enquiry is only to decide and assess whether it

would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismisal against the employees. 19. Learned Additional Solicitor further relied upon another decision in Sunit Kumar Banerjee v. State of West Bengal and others ((198 0)3 SCC 304) wherein the Supreme Court has held that person considering preliminary investigation report to find a prima facie case and also framing draft chartes, competent to be later appointed as Enquiry Officer in the same case and he cannot be said to have thereby constituted himself both as prosecutor and judge. 20. Learned Additional Solicitor further referred the counter affidavit that there is no provision for appointment of preliminary enquiry officer as per the choice of the petitioner and the petitioner would be provided with ample opportunity to defend his case in the regular departmental enquiry. Therefore, no prejudice is caused to the petitioner. 21. Considering the fact that CVC has issued a circular on 29.06.19 99 that □no action should be taken on anonymous pseudonymous petitions/complaints□ and they □shall be□ filed and considering the fact that this proceedings against the petitioner both discreet enquiry and preliminary enquiry were initiated only on some anonymous letters, the benefits of this communication is available to the petitioner also. Further the communication is very specific. that □no action should at all be taken□ on such anonymous letters. The preliminary enquiry did not conclude on the date when this communication was sent by CVC. Admittedly the impugned report of the preliminary enquiry was subsequent to this communication. The report is dated 25.05.2000. The Prohibition that □no action should at all be taken□ will cover all pending proceedings on that date. No action of any nature or any kind shall be taken. The communication is very specific and emphatic. No authority can ignore this communication act contrary to the terms of that communication. Any steps, or any orders of any kind contrary to CVC communication is not valid and becomes illegal and unenforceable in law. Therefore, though the said communication is subsequent to the date of ordering the preliminary enquiry, inasmuch as the entire proceedings are under challenge in the writ petition, the petitioner is entitled to rely upon the above CVC communication. Therefore, inasmuch as the preliminary enquiry was initiated on the basis of anonymous letter, the entire report is liable to be quashed and accordingly it is quashed. 22. Further, the petitioner has raised a plea of bias against the third respondent, he has stated very clearly that the third respondent is closely associated with Pushkarsingh who was responsible for sending all these anonymous letter. But the counter affidavit has been filed only by the first respondent and the third respondent has not filed any counter affidavit.

23. In the counter affidavit filed on behalf of the first respondent, who swear to the affidavit cannot deny that the third respondent had no bias against the petitioner and the third respondent was not closely associated with the said Pushkar Singh. Even though the third respondent is a party to the above writ petition, he has not chosen to file an affidavit denying the allegations made against him. When specific allegations such as bias are made against the person who is a party to the proceedings, it is, that person who must file counter affidavit denying those charges. If such a counter affidavit is not filed, adverse inference has to be taken against him. Therefore, the averments in the affidavit that the third respondent is the

close associate of the said Pushkar Singh and he was inimical towards the petitioner is to be accepted as proved in the absence of specific denial by the third respondent.
24. The petitioner has specifically stated that for all the anonymous letters, Pushkar Singh was instrumental which were admittedly within a span of one month. It is not uncommon to receive anonymous letters against persons in government service who are expecting promotions. All those persons who want to stop such promotions due to some personal reasons would indulge in such unhealthy practice of writing anonymous letters. By this method of writing anonymous letters and initiating action on the basis of such anonymous letters, the promotions of officers are very often delayed or at times even denied. This is not a healthy practice to be followed. That is the reason why, CVC in its communication in 1999 has very strongly stated that anonymous letters should be filed and no action should be taken on the basis of such letters. 25. Considering the facts and circumstances of the case, it appears that anonymous letters are sent only in order to prevent the petitioner from being promoted to the higher post. From the affidavit and also from the record submitted, it is seen that the Officer had been awarded appreciation and commendation of his services by Director General of Central Reserve Police Force on 27.11.2002 and on 12the August, 2001 from P.C.Joshi, the Inspector General of Police, CRPF, Srinigar and Inspector General of Police, Kashmir Zone on 28.01.2001. Number of appreciations and commendations in the year 2001 to 2003 has been obtained from various officers. It is seen that an Officer of good record has sought to be prevented from getting further promotion by some unscrupulous elements for some personal reasons. Such things should never be allowed in the interest of the institution.
26. For the foregoing reasons, the discreet enquiry as well as the preliminary enquiry which were initiated only on the basis of anonymous letters, are to be rejected and hence both the reports are quashed. 27. Based on the report of the preliminary enquiry, further proceedings of domestic enquiry has been initiated. Since domestic enquiry has been initiated, the annual confidential report for the yea4r 199 8-99 has been withheld. That is impugned in the W.P.No.11543 of 2000 subsequent proceedings consequent on that will also have to be quashed. Hence, the impugned order of withholding the ACR 1998-99 is also quashed. Therefore, consequent to the decision of the writ petition W.P.No.11543 of 2000, the other prayer in the other W.P.No.11544 namely annual confidential report so far as remarks passed upon the preliminary enquiry shall also be removed. 28. For all the foregoing reasons stated above, both the writ petitions are allowed. No cost.

Index :Yes

Internet:Yes

ksr/kvsg

To
1. The Director General of Police Central Reserve Police Force
Block No.I

C.G.O.Complex, Lodhi Road
New Delhi 110 003.
2. The Inspector General of Police
(OPS and Training)
Central Reserve Police Force
Block No.1
C.G.O Complex, Lodhi Road
New Delhi 110 003.
3. Mr.T.R.Arora,
Deputy Inspector General of Police
CRPF, Agarthala
Tripura State.